

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Date: April 4, 2001

Case No.: **2000-LCA-7**

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
Complainant

v.

SOFTWARE TECHNOLOGY GREENHOUSE, USA, INC.,
Respondent

DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT

Respondent requested a hearing in this matter which arises under the Immigration Nationality Act ("INA"), 8 U.S.C. §§1101(a)(15)(H)(i)(b), 1182(n), 1184 and 29 U.S.C. 49 et seq. and the implementing regulations found at 29 C.F.R. Part 655, subpart H and I. The parties have submitted a settlement agreement, the terms of which are hereby incorporated by reference, a copy of which is attached.

This Administrative Law Judge, having reviewed the Settlement Agreement, concludes that this settlement agreement is in the best interest of all the parties and it is therefore **ORDERED** that the settlement agreement is **APPROVED** pursuant to the provisions of 29 C.F.R. §507.840.

At Washington, DC

JOHN M. VITTONE
Chief Administrative Law Judge

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Administrator,
Wage and Hour Division
U.S. Department of Labor,
STA-7

Case No. 2000-

Complainant,

v.

SOFTWARE TECHNOLOGY GREENHOUSE U.S.A., INC.,

Respondent.

CONSENT FINDINGS

For the purpose of disposing of this matter, without there being any trial or adjudication of any issue of fact or law, and without constituting a finding of the Secretary within the meaning of 8 U.S.C. § 1182(n)(2)(C), the parties agree as follows:

1. This action arises under the Immigration and Nationality Act as amended [8 U.S.C. H 1101(a)(15)(H)(i)(b), 1184(I)(1), hereinafter "the Act"], and 20 C.F.R. Part 655 for a hearing involving alleged violations of the provisions of Section 1182 (n) of the Act and the assessment of a civil money penalty.

2. On July 7, 2000, the Administrator of the Wage and Hour Division, United States Department of Labor, issued a determination that a basis existed to make a finding that

Respondent had failed to pay wages as required by the Act, and had failed to provide notice of certain Labor Condition Applications as required by the Act. The Administrator determined that \$36,117.42 in back wages was owed to employees by Respondent. Furthermore, as part the determination concerning the notice violations, a civil money penalty in the amount of \$3,000.00 was assessed. Finally, the determination includes the notification of the Employment and Training Administration and the Attorney General of the notice violations, upon their becoming final.

3. Respondent made a timely request for a hearing challenging the Administrator's determination.

4. The parties subsequently entered into negotiations designed to resolve this matter amicably. As a result of these negotiations, the Complainant and the Respondent, without admitting liability, have agreed to settle this litigation in exchange for certain mutual agreements. These agreements are as follows:

a. Respondent shall pay \$36,117.42, less deductions for the employee's share of social security and withholding taxes, to seven employees in the following amounts:

Shanthala Damle	\$5,021.14
Hannam Humin	\$786.68
Goe Joeng	\$4,261.59
Winarko Tedjo	\$1,907.60
Tirta Wahyudi	\$5,928.93

Prajnawati Wibowo	\$5,937.00
Weiyang Zhao	\$12,274.48

Respondent shall transmit the total amount of these back wages to Complainant, by certified check, bank check or money order made payable to 'Wage and Hour Division - U.S. Department of Labor', in three equal installments of \$12,039.14. The first one-third installment shall be sent to Complainant with the return of these Consent Findings, which shall occur on or before March 30, 2001. The second one-third installment shall be sent to Complainant on or before April 30, 2001. The final one-third installment shall be sent to Complainant on or before May 31, 2001. Nothing herein shall prevent Respondent from paying the back wages owed sooner than provided in this paragraph. Complainant shall make the appropriate deductions..and shall transmit the net amount of the individual back wages amounts set forth above to each of the employees listed.

b. Respondent shall pay an assessment of civil money penalties in the amount of \$1,500. This assessment is to be paid by Respondent by separate certified check, bank check or money order made payable to "Wage and Hour Division, U.S. Department of Labor." This payment shall be sent to Complainant with the return of these Consent Findings, to occur on or before March 30, 2001.

c. Respondent shall dismiss with prejudice any and all lawsuits currently pending against any of the seven employees listed in paragraph 4a herein by April 30, 2001, and shall send to Complainant a copy of the docketed notices of

dismissal filed with the Court upon such filing. Respondent is not obligated to dismiss any such lawsuit containing a counterclaim against it until the counterclaim is dismissed. Respondent also shall not institute any new lawsuit against any of the seven employees listed in paragraph 4a herein.

d. Complainant shall not notify the Employment and Training Administration or the Attorney General concerning the violations alleged in this matter.

e. Respondent shall comply in all respects with the Act and applicable regulations in connection with any future H-1B application and any H-1B employees employed as a result of said application.

5. Respondent's failure to carry out any portion of these Consent Findings shall subject Respondent to the statutory penalties for failure to pay wages and/or providing notice, found at 8 U.S.C. § 1182 (n) and 20 C.F.R. Part 655.

6. The entire record upon which any order entered into in conformance with these Consent Findings shall be based shall consist of the Administrator's determination, Respondent's request for hearing, and these Consent Findings.

7. The parties waive any further procedural steps before the administrative law judge and waive any right to challenge or contest the validity of these Consent Findings and any order entered into in accordance with these Consent Findings.

8. This agreement shall fully and finally resolve all outstanding issues between the parties that were raised, or reasonably could have been raised, in the Administrator's determination of July 7, 2000.

9. Each party shall bear its own costs, attorney's fees and expenses.

Judith Kramer
Acting Solicitor of Labor

Frank V. McDermott, Jr.
Regional Solicitor

James Glickman
Trial Attorney
2001

March 27,

Dated

U.S. Department of Labor
Office of the Solicitor
John F. Kennedy Federal Bldg.,
Room. E-375
Boston, MA 02203

RESPONDENT
Software Technology Greenhouse U.S.A., Inc.
By:
Garry Lowe

March 22, 2001
Dated